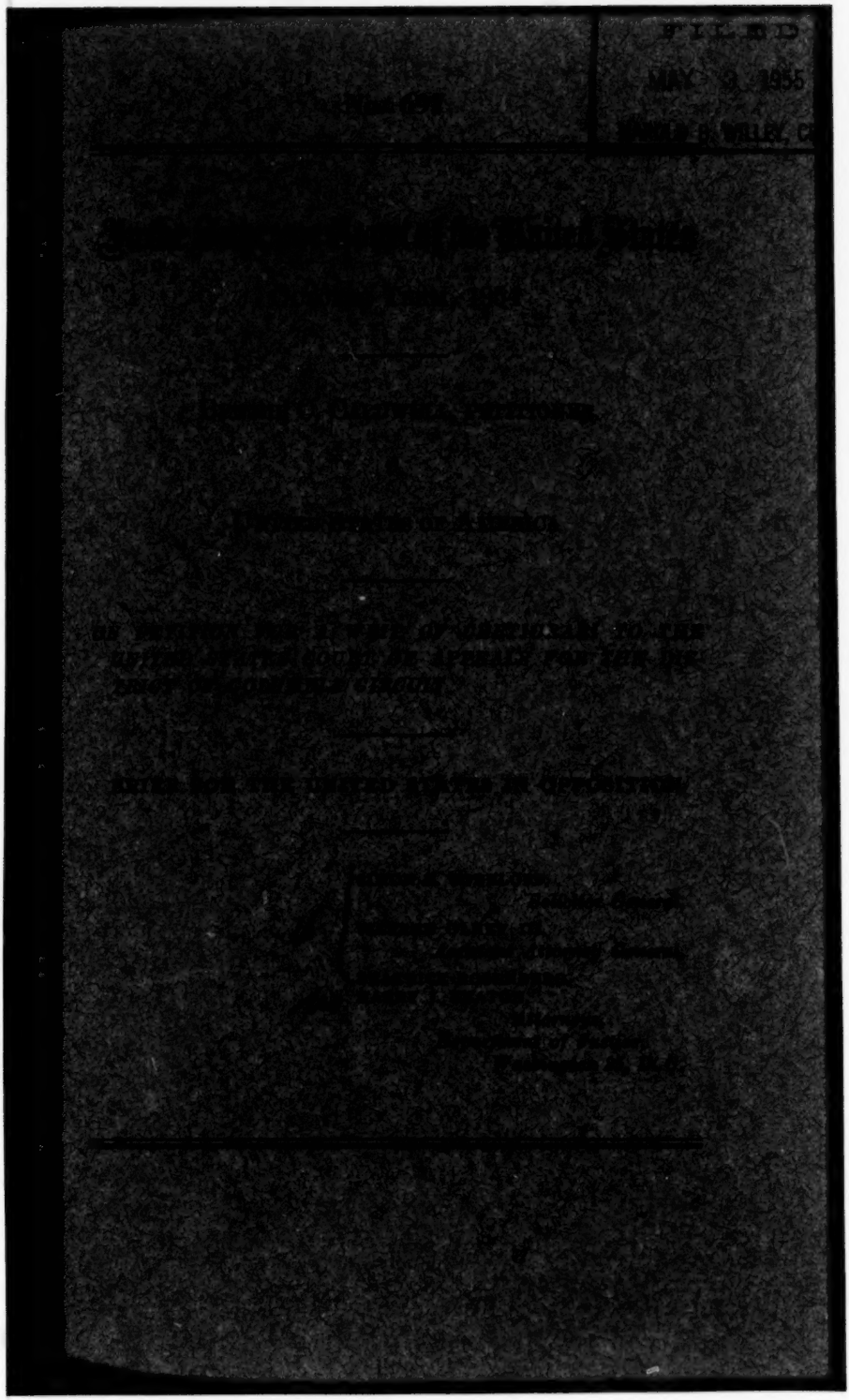

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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 697

BENNIE C. CALDWELL, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinions of the court of appeals (Pet. App. 1-7, R. 869-875) are reported at 218 F. 2d 370.

JURISDICTION

The judgment of the court of appeals was entered on December 23, 1954 (Pet. App. 12; R. 876). Petitions for rehearing were denied on February 3, 1955 (Pet. App. 14, 15; R. 880, 881). On March 4, 1955, the Chief Justice extended the time for

filing a petition for a writ of certiorari to April 4, 1955. The petition for a writ of certiorari was filed on April 4, 1955. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTION PRESENTED

Whether, on a charge of endeavoring to impede the administration of justice by trying to ascertain the sentiments of jurors before verdict, the court should have instructed the jury that in order to convict it must find that the defendant had a specific corrupt motive.

STATUTE INVOLVED

18 U. S. C. 1503 provides:

> Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any witness, in any court of the United States or before any United States commissioner or other committing magistrate, or any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States commissioner or other committing magistrate, in the discharge of his duty, or injures any party or witness in his person or property on account of his attending or having attended such court or examination before such officer, commissioner, or other committing magistrate, or on account of his testifying or having testified to any matter pending therein, or injures any such

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grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any such officer, commissioner, or other committing magistrate in his person or property on account of the performance of his official duties, or corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

STATEMENT

Petitioner was convicted in the District Court for the District of Columbia on one count of an indictment charging obstruction of justice in violation of 18 U. S. C. 1503. He was sentenced to a term of imprisonment of from 20 months to five years and was fined $500 (R. 848, 849).[1]

The pertinent count of the indictment charged in

[1] Petitioner was acquitted of a violation of Title 22, Section 701 of the D. C. Code, charged in the second count of the indictment. The indictment upon which petitioner was tried was a four-count indictment returned on June 6, 1950 naming one Daniel M. Gary in a conspiracy count with petitioner and in another count alone. (R. 834-836.) On May 7, 1951, a severance was ordered as to Gary for reasons of health (R. 437). Petitioner went to trial on the two counts naming him alone and was convicted. On appeal the conviction was reversed and the case remanded for a new trial. *Caldwell* v. *United States*, 205 F. 2d 879 (C.A. D.C.). The new trial resulted in the conviction which is before this Court.

substance that petitioner on or about January 19, 1950, had offered a sum of money to one Robert C. Fraction in an endeavor to influence him to sound out the feelings and opinions of the jurors impaneled in the case of *United States* v. *Lewis, Bellici and Acalotti* prior to return of the verdict, and that petitioner thereby corruptly endeavored to influence, obstruct and impede the due administration of justice in the United States District Court for the District of Columbia where the *Lewis* case was being tried. (Pet. App. 10-11; R. 835.)

The evidence in support of this charge may be summarized as follows:

It was stipulated that the case of *United States* v. *Lewis, et al.* (Criminal Case No. 476-49) went to trial before Judge Holtzoff in the United States District Court for the District of Columbia on January 11, 1950, and lasted until January 25, 1950, the verdict being brought in on January 26, 1950 (R. 6, 7, 25). The panel was selected on January 3, 1950 (R. 15). Robert Fraction testified that he was a member of the panel but did not serve as a juror in the *Lewis* case (R. 27-28). About a week after the beginning of the trial, petitioner, whom Fraction did not know, came to Fraction's house about 11:30 p. m. (R. 31-32). Petitioner introduced himself as Lance and claimed to be acquainted in the neighborhood (R. 32).

Petitioner told Fraction that he knew that Fraction was on the *Lewis* case jury, that there was plenty of money in the case, that the lawyers were getting $10,000 each "and we might as well get

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some of it" (R. 32-33). Petitioner offered Fraction $1,000 "To get among the jurors, and keep him posted" (R. 33). He wanted him to "talk with the jurors, feel them out and see how they felt towards the particular case." (R. 34.) Fraction refused the money (R. 33-34). Subsequently Fraction identified petitioner in an FBI line-up (R. 37-38). There was considerable testimony, including petitioner's own, that he attended the Lewis trial on numerous occasions (R. 82, 99-100, 502) but no testimony as to the motive behind petitioner's attempt to influence Fraction to obtain the views of the jurors. Petitioner testified in his own behalf (R. 444-450). His defense was an alibi (R. 445).

At the conclusion of the case the court charged the jury [2] as follows with respect to the term "corruptly" as used in 18 U. S. C. 1503:

> The word "corruptly", is capable of different meanings in different connections. As used in this statute, "corruptly" means simply for an improper motive. Such motive may be the hope of pecuniary reward or benefit, or it may be the desire to aid someone else; but under this particular statute, any endeavor to impede or obstruct the due administration of justice is corrupt.

It defined the terms "obstruct", "impede" and "endeavor". Then, after explaining the great importance of the integrity and sacredness of the

[2] The complete charge of the trial judge relating to the obstruction of justice count is set out in the Appendix, *infra*, p. 12.

jury, it charged as "a matter of law" that "if any person endeavors to ascertain the feelings or opinions of jurors while they are sitting in a case and prior to their verdict, that is a corrupt endeavor to obstruct or impede the due administration of justice."

The court set out as the elements which the government had to prove beyond a reasonable doubt to support a verdict of guilty the following:

> (1) That there was a trial going on in the United States District Court for the District of Columbia, namely, Criminal No. 476-49, United States v. Lewis, Bellici and Acalotti;
>
> (2) That prior to the verdict the defendant Caldwell, in the District of Columbia, offered Robert C. Fraction money; and
>
> (3) That said money was offered by Caldwell for the purpose of having Fraction find out the feelings or opinions of the jurors sitting in said case.

It stated:

> * * * If you find beyond a reasonable doubt that the defendant offered Robert C. Fraction a sum of money for the purpose of obtaining information as to the feelings and opinions of the jurors sitting in the Lewis case, prior to the verdict, then you are instructed, as a matter of law, that such act was a corrupt endeavor to influence, obstruct, or impede the due administration of justice in this court, and that is all that the government must prove in

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> order to establish the defendant's guilt under Count I.

At the conclusion of the instructions counsel for petitioner objected to these charges as follows:

> * * * I think Your Honor stated in substance that if they find that Caldwell attempted to ascertain the feelings or opinion that would constitute a violation of the statute. We object to that, Your Honor, and say that the jury should have been instructed that they must go beyond that, and that they must find that there was an actual intent to effect it, in the discharge of their duties.

Petitioner contested the validity of the instructions on appeal. The court of appeals affirmed, Judge Washington dissenting (Pet. App. 1-7; R. 869-875).

ARGUMENT

The pertinent portion of 18 U. S. C. 1503 provides that "Whoever * * * corruptly * * * endeavors to influence, obstruct, or impede, the due administration of justice, * * *" shall be punished. It is not disputed that this crime requires criminal intent. Cf. *Morissette* v. *United States*, 342 U. S. 246. It is also clear that the trial court did charge on criminal intent, since it required the jury to find that petitioner offered money to Fraction "for the purpose of having Fraction find out the feelings or opinions of the jurors sitting in said case."

The ultimate issue in this case, therefore, is

whether the court, in addition, should have instructed the jury that they had to find that petitioner's attempt to discover the feelings of the jury was accompanied by a specific corrupt motive. Petitioner, relying upon the dissenting opinion below, argues that a corrupt motive is an element of the offense, and that, in charging that the mere endeavor to ascertain the feelings of the jurors established the corrupt endeavor condemned by the statute, the court withdrew from the jury an element of the requisite intent.

It is clear, as the majority below held, that an unauthorized attempt to ascertain the sentiments of jurors sitting on a pending case is a corrupt attempt to obstruct the administration of justice regardless of the specific motive for such act. What is here involved is not a mere communication with jurors, but an attempt to ascertain their probable vote through a paid intermediary. As the district court pointed out in its charge, great precautions are always taken to prevent such knowledge from being disclosed. It is axiomatic that the integrity and sacredness of the jury in a criminal case is of the highest importance and that therefore "The integrity of jury proceedings must not be jeopardized by unauthorized invasions". *Remmer* v. *United States,* 347 U. S. 227, 229. Consequently, any unauthorized endeavor tending to interfere with or affect the jury process necessarily obstructs justice. The courts have long so held. Thus, the mere shadowing of jurors, though unknown to them, has been held to be a con-

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tempt of court because it "tended to obstruct the honest and fair administration of justice". *Sinclair* v. *United States*, 279 U. S. 749, 764.[3] An experimental approach to the corruption of a juror was held to be an "endeavor" within the meaning of a prior and substantially identical obstruction-of-justice statute where the defendant was inquiring of a prospective juror's wife what her husband's feelings about a case were, because the defendants in the case "did not want to pay money to any of the petit jurors sitting at the trial unless they knew such petit jurors would favor their acquittal." *United States* v. *Russell*, 255 U. S. 138, 141.[4]

Although the term "corruptly" is capable of numerous meanings in different contexts, as used to qualify "endeavor" in 18 U. S. C. 1503, it simply means any intentional endeavor to obstruct justice. The intent required is no more than knowledge or notice that justice is being administered coupled with the intention to do the forbidden act. *Pettibone* v. *United States*, 148 U. S. 197, 207; *Broadbent* v. *United States*, 149 F. 2d 580, 581 (C. A. 10). Where knowledge is shown to be present and the intended act does in fact constitute an endeavor to obstruct justice, then an intentional endeavor to obstruct justice is established. It is no defense that

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[3] It may be noted that the contempt statute and 18 U.S.C. 1503 originated as complementary legislation in the Act of March 2, 1831, 4 Stat. 487, 488.

[4] See *Emery* v. *State*, 78 Neb. 547, 111 NW 374, where sounding out a juror to find out how he stood with reference to a case was held to be contemptuous.

the defendant acted for the highest motives; in fact, motive is wholly immaterial. *Kong* v. *United States*, 216 F. 2d 665, 668 (C. A. 9).

Petitioner contends that a construction of the term "corruptly" which would not require a specific improper motive would be in conflict with the ruling of the Fourth Circuit in *Martin* v. *United States*, 166 F. 2d 76. That case, however, does not stand for the proposition that improper motive is a necessary element of the offense. There, the trial court had charged that "corruptly" meant "for an improper motive". The court of appeals held that the elements of corrupt intent and guilty knowledge had been adequately covered by the charge, but since no issue was or could have been raised as to whether the charge on motive was required, the court was not called upon to decide whether such an instruction must be given in every case. In any event, as shown above, the weight of authority is to the contrary.

The majority of the court below, did not, as petitioner contends, recognize that the trial court's instructions were inaccurate with respect to the necessity of criminal intent. It found the charge inaccurate only insofar as it failed to include the possibility of an authorized attempt to contact the jury. It was this error which the court found nonprejudicial under Rule 52(a) of the Federal Rules of Criminal Procedure on the ground that petitioner's defense was an alibi (Pet. App. 4). Manifestly, the possible existence of authorized attempts by court officials to ascertain how a jury stands has no significance with respect to the facts of this case.

CONCLUSION

The decision below is correct, there is no conflict of decisions, and further review is not called for. It is respectfully submitted that the petition for a writ of certiorari should be denied.

SIMON E. SOBELOFF,
Solicitor General.

WARREN OLNEY III,
Assistant Attorney General.

BEATRICE ROSENBERG,
HARRY J. KEATON,
Attorneys.

MAY, 1955.

APPENDIX

The full charge of the trial judge relating specifically to the obstruction of justice count reads as follows:

As I have told you, Count I charges the defendant, Bennie C. Caldwell, with corruptly endeavoring to influence, obstruct, and impede the due administration of justice in this court, in that on or about January 19, 1950, in the District of Columbia, he offered a sum of money to Robert C. Fraction for the purpose of having Fraction obtain from the jurors impaneled in the case of United States v. Lewis, Bellici, and Acalotti, Criminal Case No. 476-49, which was then on trial in this court and prior to the verdict therein, information as to their feelings and opinions concerning that trial.

The pertinent part of the statute relating to the offense on which Count I is based, reads as follows:

> "Whoever corruptly endeavors to influence, obstruct, or impede the due administration of justice shall be"

punished as prescribed by the statute.

The word "corruptly", is capable of different meanings in different connections. As used in this statute, "corruptly" means simply for an improper motive. Such motive may be the hope of pecuniary reward or benefit, or it may be the desire to aid someone else; but under this particular statute, any endeavor to impede or obstruct the due administration of justice is corrupt.

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The words "obstruct" and "impede" I believe are clear without definition; they mean merely to block, or to hinder, or to retard.

You may wonder just what sort of action constitutes an endeavor. Any effort to accomplish the evil purpose that the statute was enacted to prevent, even if the effort falls short of an actual attempt to influence the jurors, and even if it is anticipatory or preparatory to an affirmative attempt to influence the jurors, or some other attempt to obstruct or impede justice, is an endeavor within the meaning of the statute.

Now, as you have learned in your term of jury service here, jurors, after they are impaneled and while they are hearing the testimony of a trial, must not talk about the case on trial until after they have rendered their verdict in the case and have been discharged; and, particularly, no one should inquire prior to the verdict as to the jurors' feelings or opinions as to the matter on trial. The integrity or sacredness of the jury as to a case on trial must be inviolate, in order that both the defendant and the prosecution may have the benefit of the jurors' own verdict, untouched by any outside influence.

So, you are instructed, as a matter of law, that if any person endeavors to ascertain the feelings or opinions of jurors while they are sitting in a case and prior to their verdict, that is a corrupt endeavor to obstruct or impede the due administration of justice.

Under the facts in this case, in order for you to

find the defendant Caldwell guilty under Count I, the Government must prove beyond a reasonable doubt each and all of the following elements:

(1) That there was a trial going on in the United States District Court for the District of Columbia, namely, Criminal No. 476-49, United States v. Lewis, Bellici and Acalotti;

(2) That prior to the verdict the defendant Caldwell, in the District of Columbia, offered Robert C. Fraction money; and

(3) That said money was offered by Caldwell for the purpose of having Fraction find out the feelings or opinions of the jurors sitting in said case.

It is not necessary that you find that Caldwell actually tendered the money, or that Fraction accepted the money, or that he agreed to accept it or to do anything or that he actually did anything, pursuant to the alleged offer by the defendant Caldwell. If you find beyond a reasonable doubt that the defendant offered Robert C. Fraction a sum of money for the purpose of obtaining information as to the feelings and opinions of the jurors sitting in the Lewis case, prior to the verdict, then you are instructed, as a matter of law, that such act was a corrupt endeavor to influence, obstruct, or impede the due administration of justice in this court, and that is all that the Government must prove in order to establish the defendant's guilt under Count I.

If you find that the Government has established

beyond a reasonable doubt all the elements as I have enumerated them for you, then you may find the defendant guilty under Count I. However, if you find that the Government has failed to establish any one or more of those elements which I have enumerated to you, you must find the defendant not guilty as to Count I.

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